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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,233	12/07/2001	Allen J. Brenneman	MSE #2616	5861
7590	03/22/2004		EXAMINER	
Jerome L. Jeffers, Esq. Bayer Corporation P.O. Box 40 Elkhart, IN 46515-0040			OLSEN, KAJ K	
			ART UNIT	PAPER NUMBER
			1753	

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,233

Applicant(s)

BRENNEMAN ET AL. 

Examiner

Kaj Olsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date 3-2-2004
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. Claims 1-15 and 17-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the interview of 3-2-2004.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. In the claim, the use of the term "casting" is confusing both because the term has no antecedent basis and because it implies some intermediate step of construction of the sensor. The claim should be drafted with language only drawn to the final constructed sensor.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietze et al (USP 5,393,391) in view of Mandle (USP 3,773,646) and Crismore et al (USP 5,997,817).

8. Dietze discloses an electrochemical sensor comprising a sensor base 7 and a removable portion 45 inserted into said sensor base. See fig. 3 and 4 and col. 9, lines 46 through col. 10, line 5. That removable portion would read on applications term "sacrificial insert" giving the claim language its broadest reasonable interpretation. Dietze further discloses electrical contacts 19, 21 where the sacrificial insert is positioned between the contacts (fig. 3 as an example). Dietze also discloses a foil material 45 over said sensor base and the sacrificial insert. Said materials is clearly formulated to allow removal of the insert from the sensor base leaving a trough in the sensor base. In addition, the insert 45 could be removed from material 49 if enough force is applied. Although Dietze does not explicitly disclose the use of a plastic for material 49, Mandle teaches in an alternate electroanalytical device that plastic is an appropriate choice of material for a sealing foil (col. 11, line 6 through col. 12, line 3). It would have been obvious to one of ordinary skill in the art at the time the invention was being made to utilize a plastic foil as taught by Mandle for the sensor of Dietze because plastic provides an air tight seal that prevent electrolyte evaporation. In addition, the substitution of one known sealing means for another when the results are not unexpected requires only routine skill in the art. Dietze also does not

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explicitly specify when the channel in the sensor base is a "capillary channel" (although Dietze does appear to suggest that the channel should be appropriately dimensioned to facilitate capillary action (col. 14, lines 18-22)), Crismore teaches that the use of capillary dimensions for the measurement chamber of the sensor. See abstract and col. 1, lines 30-40. A capillary channel would provide the desired capillary action of Dietze and would require less sample for analysis and it would have been obvious to one of ordinary skill in the art at the time the invention was being made to utilize the teaching of Crismore and make the trough of Dietze a capillary channel in order to facilitate the desired capillary action and obviate the need for large amounts of sample.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Maurer and Huber disclose alternate sensing devices with insertion elements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (571) 272-1344. The examiner can normally be reached on Monday through Thursday from 6:30 A.M. to 4:00 P.M. and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached on 571-272-1342. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Kaj Olsen', with a stylized flourish extending to the right.

Kaj Olsen Ph.D.
Primary Examiner
AU 1753
March 16, 2004